IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

Crl.Rev.Pet.No. 935 of 2000()

CC.140/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VADAKKANCHERY
CRA.354/1998 of SESSIONS COURT, THRISSUR
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PETITIONER(S): APPELLANT/ACCUSED

SULAIMAN, S/O. THEKKAN USUF,
THANDANKADAVU COLONY DESOM,
ELANAD VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.K.V.RAMABHADRAN

RESPONDENT(S): RESPONDENT/COMPLAINANT

STATE/ EXCISE INSPECTOR,
PAZHAYANNUR, CR. NO.21/96
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.BREEZE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.HEMA, J.

Crl.R.P No.935 of 2000

Dated 16th March, 2007.

O R D E R

Revision petitioner was convicted and sentenced for offence under section 55(a) of Abkari Act, to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 25,000/- and, in default of payment of fine, to undergo simple imprisonment for six months. The said conviction was altered from section 55(a) to section 58 of Abkari Act by the Sessions Court in an appeal filed by the revision petitioner. Sentence of imprisonment for 15 days and fine of Rs.15,000/- according to learned Sessions Judge, would meet the ends of justice and hence sentence was accordingly modified. This appeal is against the said conviction and sentence.

2. According to prosecution, the accused-revision petitioner was found in his possession one litre of arrack by him in a plastic container MO1 on 7.12.1996 at 12.15 pm. He was intercepted and arrested since the possession of liquor is illegal ands in contravention of the provision contained in section 55 (a) of Abkari Act. A mahazar was prepared and articles were

seized. Sample was taken and, on analysis, it was found to be liquor. Both the courts below held that, though the independent witnesses to the occurrence, namely Pws3 and 4, they are hostile. They are attestors to the mahazar Ext.P1.

3. Pws1 and 2 are the official witnesses, and they are Excise officials. They gave evidence in tune with the prosecution case. It was held that contents of Ext.P1, seizure mahazar also supported oral evidence of PW1 and PW2. No reasonable doubt was generated in the mind of the court against the prosecution version that one litre of arrack (MO1) was seized from the possession of the revision petitioner by the Excise Officials under Ext.P1 mahazar.

4. But, lower appellate court found that prosecution alleged only possession of liquor and there was no allegation that revision petitioner was found “transporting” illicit arrack. Therefore, the contention raised by learned counsel for the revision petitioner that possession simplicitor cannot attract culpability under section 55(a) of Abkari Act was accepted. The conviction and sentence are passed under section 58 of the

Abkari Act.

5. Curiously, the court below accepted the contention of the learned counsel for the accused that possession simplicitor is punishable under section 58 of Abkari Act. The lower appellate court found that the trial court does not appear to have addressed itself on this aspect. The court found that possession simplicitor would attract offence under section 58 of the Abkari Act as contended by learned counsel for accused and hence the conviction was altered from section 55(a) to section 58 of the Abkari Act.

6. At the time of hearing, revision petitioner and his counsel were absent, though the case was posted twice in the disposal list. Even today, there is no representation for revision petitioner. Hence, on a perusal of the records and on hearing learned public prosecutor, who supports the finding of the court below, I pronounce this order.

7. Learned public prosecutor submitted that possession of arrack, which is proved in this case by evidence of PWs 1 and 2 and the document Ext.P1 would be enough to convict the

accused under section 58 of the Abkari Act, as rightly held by the lower appellate court. On a reading of the relevant provision, I find that this argument cannot be accepted.

8. A reading of section 58 of the Abkari Act reveals that to attract an offence under section 58, mere possession of liquor by the accused is not sufficient. The accused must have the requisite knowledge referred to in section 58. Prosecution must establish that the accused knew that the liquor is either unlawfully imported, transported or manufactured or that he knew the duty, tax or rental payable under the Act has not been paid in respect of the liquor which is in his possession.

9. In this case, except the accused was in possession, no other facts which are relevant under section 58 are proved. The courts below did not consider whether relevant ingredients of section 58 are proved by the prosecution. The lower appellate court held that the prosecution proved that the accused was in possession of arrack and that possession simplicitor is an offence under section 58 of the Abkari Act. This is illegal and hence an interference is warranted. The

conviction and sentence passed against the revision petitioner under section 58 of Abkari Act cannot be sustained. The mere possession of arrack by accused will not constitute offence under section 58 of Abkari Act.

10. In the result, conviction and sentence passed against the revision petitioner for offence under section 58 of Abkari Act are set aside. The revision petitioner is not found guilty and he is acquitted of offence under section 58 of the Abkari Act. He is set at liberty forthwith.

The revision petition is allowed.

K.HEMA, JUDGE.

Krs.